

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREELEY G. MIKLASHEK, M.D.,

Plaintiff,

vs.

COUNTY OF MUSKEGON, JAMES
ELWELL and GLENN EATON,

Defendants.

CASE NO: 1:04-cv-0787

HON. ROBERT HOLMES BELL

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DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Now come Defendants County of Muskegon, James Elwell and Glen Eaton, by and through their attorneys, Cummings, McClorey, Davis & Acho, P.L.C., pursuant to F.R.Civ.P. 56(b), and move for summary judgment as follows:

1. The Plaintiff's claim under the First Amendment and 42 U.S.C. §1983 lacks merit. To the extent protected speech was involved, the Plaintiff's "speech" was made carelessly, recklessly, or knowing that it was false.
2. The non-renewal of the contract was not retaliation nor punishment for protected speech.

3. The Michigan Constitution 1963 did not provide relief because the Plaintiff's claim was not barred against these Defendants by operation of the Eleventh Amendment; adequate remedy exists under 74 U.S.C. §1983.

4. The Plaintiff's claim of violation of public policy is not applicable under the applicable law and operative facts.

5. The Plaintiff's claim under the Whistleblower's Protection Act of the State of Michigan fails to state a cause of action because the Plaintiff was an independent contractor, his report was made in careless or reckless disregard for the truth, and the contract was terminated for reasons independent of his report to the State of Michigan.

6. The Defendants incorporate by reference the attached Brief in support of this Motion and the appended exhibits.

WHEREFORE, your Defendants pray this Honorable Court to grant Summary Judgment for the Defendants, together with costs, interest, and attorney fees, including those provided by 42 U.S.C. §1988 and MCL 600.2411.

CUMMINGS, McCLOREY, DAVIS & ACHO, PLC
Attorneys for Defendants

DATED: June 17, 2005

BY /s/
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